



Legislation restricting access to public restrooms and changing facilities for transgender individuals in Texas (US): A qualitative analysis of testimony

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ABSTRACT

Background: An alarming amount of legislation in the United States has sought to restrict the rights of transgender people, often targeting access to public spaces or restrooms. One example of this legislation is the Texas Privacy Act (Senate Bill 6; 2017), which detailed “regulations and policies for entering or using a bathroom or changing facility” (Texas Legislature Online).

Aims: The hearing for SB 6 included over 18 hours of public testimony, which we analyzed to better understand arguments for and against this bill.

Methods: We conducted a thematic analysis of this public testimony.

Results: Supporters of SB 6 frequently framed their arguments in terms of safety and security, economic impact, and privacy and dignity. Those opposing SB 6 focused on discrimination, safety and security, and the effects of transgender people being forced into the wrong facilities.

Discussion: These findings can aid in understanding education that may help to combat viewpoints that lead to passing such legislation and contributes to understanding how legal policies shape views of gender.

KEYWORDS

Bathroom bill; gender minority; legislation; transgender; transphobia

Research into the ethics and consequences of legislation that targets the rights of transgender people is limited but has been rapidly developing. Definitions of sex and gender for the purposes of legislation that impacts individuals’ access to public bathrooms, locker rooms, changing facilities, and other areas are currently a subject of debate in both legislative hearings and the public sphere. Understanding factors that influence public opinion of transgender and gender diverse (TGD) individuals is critical in considering bills and policies that affect these groups. Legislation that restricts the rights of TGD people in relation to public accommodations and public restrooms has significant implications for this community, including kidney damage or urinary tract infections from avoiding bathrooms altogether (James et al., 2016), increased levels of anxiety in these public spaces (Hatzenbuehler et al., 2010; Hughto et al., 2015), and threats of verbal and physical harassment (Platt & Milam, 2018). Given this, we analyzed public testimony from Texas regarding Senate Bill 6 in 2017, which proposed regulating the use of public bathrooms, locker rooms,

and changing facilities in Texas based on the gender marker on an individual’s birth certificate. This will serve as a case analysis of what types of arguments individuals present in support and opposition of such legislation.

Attitudes toward TGD people

Over the past few years, national surveys have provided crucial information regarding public opinion about TGD individuals and the broader lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community. It has been noted that partisanship is a stronger predictor of attitudes toward TGD individuals than attitudes toward lesbian and gay people (Cox & Jones, 2011). While views on LGB rights correlate strongly with TGD rights, there is less support for TGD rights on average (Norton & Herek, 2013).

It also has been noted that support for TGD people may vary geographically, as well as between rural areas and urban areas. Cities with greater diversity and more educated populations are more likely to adopt antidiscrimination

protections for TGD people (Colvin, 2008; Taylor et al., 2019). Within the state of Texas, ordinances to protect TGD individuals from discrimination in employment, housing, and public spaces were passed in Houston, Dallas, Austin, Fort Worth, Plano, and San Antonio, each of which are among the 10 largest cities in Texas. TGD residents of rural areas are more likely than their urban-dwelling counterparts to experience discrimination (Bradford et al., 2013). Living in this region may also be taxing on the mental health of TGD people. A nationwide survey of anxiety and depression amongst TGD individuals in the United States revealed TGD residents from the West South-Central division (Arkansas, Louisiana, Oklahoma, and Texas) had higher levels of mental health concerns compared to other geographic areas (Sinnard et al., 2016).

Politics and value framing

Issues that impact TGD people are extremely polarized across political lines. The literature frequently uses the term “culture wars,” which refers to conflict between groups with vastly different sets of beliefs (Castle, 2019; Lindaman & Haider-Markel, 2002). Research shows that value frames and identity can potentially influence public opinion and support for TGD people’s access to public facilities such as restrooms (Haider-Markel et al., 2019). How political elites debate the rights of TGD people may also affect public attitudes. Two common frames used in news coverage of TGD-related politics are equality, usually by those in support of TGD-inclusive legislation; and that of safety and security, usually by those in support of oppressive legislation that restricts public accommodations for TGD people (Tadlock, 2014). Individuals use frames to relate political issues to particular values, such as equality and public safety, to further influence perspectives of others (Tadlock, 2014).

Many people also implement biological framing and bio-deterministic frames to support discrimination against TGD populations (Wuest, 2019). Those who oppose inclusive public accommodation rights often frame the issue as one of individuals who were male assigned at birth in “women’s spaces” (Williams, 2016) in an effort to

fearmonger and heighten stereotypes of TGD people as dangerous. This frame dominates many discussions regarding access to public restrooms and TGD people are inaccurately positioned as a threat to women and children (Schilt & Westbrook, 2015). TGD individuals are statistically more likely to experience violence in public facilities than their cisgender counterparts; 70% of TGD people have experienced verbal harassment, physical assault, or have been denied access to public restrooms (Herman, 2013). Despite these statistics, discriminatory claims can garner support because they are framed as protecting women and children as “vulnerable populations.” Bio-deterministic framing appears frequently in debates about restroom access and relies on several assumptions: that women and children need protection, that people assigned male at birth are inherently sexual predators, and the inherent dismissal of TGD people’s gender identities (Schilt & Westbrook, 2015).

Implications for TGD individuals

Legislation that restricts access to public restrooms and facilities on the basis of sex or gender has important implications for TGD people. Fifty-nine percent of TGD people report having avoided public restrooms within the past year out of fear of confrontation or other problems, with trans men being most likely to avoid public restrooms (75%). Thirty-two percent report limiting the amount they ate or drank in order to avoid needing to use public restrooms (James et al., 2016). Such avoidance of bathrooms can also lead to urinary tract infections, kidney infections, cystitis, chronic dehydration, and kidney stones (Herman, 2013; Schmidt, 2013).

Furthermore, research documents that legislation has an impact on health outcomes for LGBTQ+ people. A longitudinal study of LGB populations measured psychiatric disorders both before (2001–2003) and during (2004–2005) periods in the United States wherein 16 states were passing amendments to ban marriage for same gender couples (Hatzenbuehler et al., 2010). There were increased rates of psychiatric disorders among LGB individuals living in states with these amendments from wave 1 (2001–2003) to wave 2 (2004–2005). Substance use and alcohol

use disorders also became more prevalent. Such legislation has been linked to greater TGD stigma, which has been shown to negatively impact the physical and mental health of TGD individuals and limits their opportunities in areas such as employment and healthcare (Hughto et al., 2015). Structural stigma in combination with rejection sensitivity is also related to increased tobacco and alcohol use (Hughto et al., 2015). Due to concerns about the effects such legislation would have on the physical and mental health of TGD individuals, the American Medical Association (AMA) House of Delegates adopted policy in 2017 to oppose efforts that would prevent TGD people from “accessing basic human services and public facilities in line with one’s gender identity” (American Medical Association, 2017).

The rise of legislation restricting the rights of TGD people

Over recent years, there have been many efforts to restrict the rights of TGD people via legislation. Given this rise, we urgently need to understand more about the arguments that influence decisions in these cases. During the year 2017, at least 27 bills concerned with restricting access to bathrooms, showers, locker rooms, and changing facilities based on the gender marker on an individual’s birth certificate were proposed in the United States (National Conference of State Legislatures, 2019). Many studies and surveys of the experiences of TGD people in bathrooms were prompted in part by North Carolina’s Public Facilities Privacy and Security Act (House Bill 2), which was passed in 2016 and replaced by a compromise bill in 2017. This bill restricted access to public restrooms based on the gender listed on an individual’s birth certificate. Under this bill, any TGD person who had not had their birth certificate updated to reflect their gender was forced to use the restroom consistent with their sex assignment at birth (North Carolina General Assembly).

Following the passing of the Public Facilities Privacy and Security Act were a number of similar bills across the nation in 2017. One such bill was the Texas Privacy Act (Senate Bill 6), which required that access to multiple-occupancy

restrooms or changing facilities in schools or government buildings be limited on the basis of sex or gender identification on one’s birth certificate (Texas Legislature Online). The hearing for this bill went on for 18 hours and 13 minutes and saw impassioned testimony on both sides. With the many hours of public testimony throughout the hearing for Senate Bill 6, this provides an interesting opportunity to examine the rhetoric on both sides of the debate and to inform the conversation about such bills and TGD rights in the United States.

Dissecting the testimony put forth at the hearing for Senate Bill 6 can help guide understanding of public and governmental opinions on TGD groups and the bills that affect this community. Increased research into politics and the consequences of legislation that serves to further marginalize TGD groups and limit their access to public facilities is critical in attempting to combat the negative stereotyping of TGD people. It also must be recognized that this issue goes beyond restroom access, as TGD people’s rights are threatened and debated in many aspects of society. However, restrooms have become a legislative battleground. Analyzing the testimony of those both supporting and opposing Senate Bill 6 can also contribute to a greater understanding of what motivates opinions concerning such legislation.

Methods

The Texas Senate uploads hearings onto their website as video files which can be watched on the Texas Senate Streaming Video Player. The hearing for the 2017 Texas Privacy Act (Senate Bill 6) was available in two segments (Senate Committee on Affairs Parts 1 and 2). The first included the reading of the bill and the senators questioning the bill author, Senator Kolkhorst, on specific components of the bill, as well as some invited testimony. It was 3 hours and 45 minutes long, with the last hour and 20 minutes saved for invited testimony. The second video was 14 hours, 27 minutes, and 53 seconds long, and was entirely composed of public testimony. The testimony was transcribed, and a thematic analysis was conducted using Dedoose software.

Analyses

The data were coded using thematic analysis (Braun & Clarke, 2006). Thematic analysis is a qualitative, pattern-based, approach including: (1) familiarizing oneself with the data; (2) generating initial codes; (3) searching for themes; (4) reviewing potential themes; (5) defining and naming themes; and (6) producing the report (Braun & Clarke, 2006). The first author reviewed all of the data to develop an initial codebook, which was reviewed by the second author. Revisions were made to definitions of codes to improve the codebook and this was then applied to all data. These codes were reviewed for themes, as outlined above. Speakers were coded as either a senator or constituents, with the latter specified as Educator, Faith Leader, Student, Mental Health Specialist/Medical Doctor, and Business Owner/Business Representative. Each portion of text was also coded as to whether the person speaking was supporting or opposing SB 6. Dedoose was also used to analyze the frequency and rates of co-occurrence of codes to enhance the analysis and findings.

Results

Of those who provided testimony, 41 individuals (13.49%) testified in support of SB 6, and 263 (86.51%) testified against. In contrast, the invited testimony was comprised of 20 individuals, 13 (65%) in support of SB 6 and 7 (35%) against it. The senators were categorized as either for or against SB 6 based on their final vote on the bill. There were 21 senators who voted in support of SB 6 (20 Republicans, 1 Democrat), and 10 who voted in opposition (10 Democrats, 0 Republicans). The senators primarily asked questions of those testifying earlier on in the process, likely due to the sheer number of constituents waiting to speak and the fact of the hearing lasting into the morning. The coding of this testimony revealed a variety of arguments used to support and oppose SB 6, with the same argument or frame sometimes even used by both sides. Here we describe each theme that emerged and provide quotes from the testimony to illustrate the findings.

North Carolina/house bill 2

North Carolina's House Bill 2 (HB 2) was passed in 2016 and replaced by another bill in 2017. HB 2, formally known as the Public Facilities Privacy and Security Act, sought to restrict access to public restrooms and changing facilities based on sex assignment at birth. Due to its similarities with the Texas Privacy Act, HB 2 was brought up during the testimony for SB 6 as an example of what to expect should the bill pass. One constituent noted that, "So when SB 6 was introduced, we had done a large amount of research on HB 2 in North Carolina. And we think m—some disagree—we think HB 2 is very, very similar to SB 6." HB 2 is frequently addressed in regard to economic impact and is brought up most often by those in favor of SB 6 who argue that there will not be a negative impact on the Texas economy. One constituent opposing SB 6 argued that HB 2 cannot be considered a reliable indicator of economic impact in Texas:

The challenge with, um, uh, and the Lieutenant Governor from North Carolina quoted statistics this morning around 2016 data, uh, I would ask him, and, uh, you can ask me as well, the impact—we book five years out, six years out, seven years out, so the economic impact in North Carolina was booked, you know, the sixteen [2016] was booked in twelve [2012] and eleven [2011]. The real economic impact that North Carolina's gonna see and that Texas would see would be in twenty-one [2021] and twenty-two [2022].

Economic impact

The economic impact of SB 6 pertains primarily to how the passing of the bill would affect events, such as sporting events, in terms of whether the organizers would take their business elsewhere. Other concerns in this area pertain to whether the passing of SB 6 would result in businesses leaving Texas or challenges to bringing in new workforce talent. A large component of related testimony focused specifically on tourism, such as here: "We are all greatly concerned about the ramifications this bill would have on our tourism industry, and our ability to compete more broadly in the

national economy.” When economic impact was discussed by those in support of SB 6, it was often in relation to the cost of building new restrooms and changing facilities with more privacy, or in remarks about how there would be no significant economic impact after passing SB 6; such discourse often co-occurred with the *North Carolina/HB 2* code, citing the economic situation in North Carolina after passing HB 2 as a proxy for the impact that passing SB 6 would have. This was despite the testimony of a number of business owners and business representatives with ties to North Carolina who reported thousands of dollars of business loss, as here:

This highly discriminatory and inflammatory law not only prevents people from relocating to North Carolina, but also corporations who offer jobs. North Carolina felt the backlash when corporations cancelled expansions in our state. PayPal, Amazon, Dell, Deutsche Bank, Co-Star Group, those are just a few of the companies that left or decided not to expand in our state.

The response to this sort of testimony by those supporting SB 6 was primarily that the monetary losses were not significant enough to factor into the discussion, as stated here by North Carolina Governor Dan Forrest:

And despite the ever-changing narratives, the negative press, lies, and distortions, and tens of millions of dollars thrown into political campaigns, there has been comparatively little economic impact in North Carolina’s booming economy. Even the most vocal opponent of House Bill 2, WREL in Raleigh, states and I quote: cancellations over HB 2 make headlines, but barely a dent in the North Carolina economy...The actual economic impact at its most extreme guesstimate for loss is less than one tenth of one percent of North Carolina’s annual GDP, and that does not count any of the growth figures that fully counteract potential loss.

While economic impact was a common talking point for those in support of SB 6, supporters did not discuss SB 6 as a bill that would benefit the economy; rather, they frequently claimed to refute arguments that the bill would have a negative effect on the economy, and made arguments that any potential effect would not be “significant” and should not affect support of the bill.

Safety and security

Safety and security, two of the most frequently cited issues, were primary topics for many in support of and in opposition to SB 6. Those in support of SB 6 referred to this legislation as necessary in ensuring public restrooms and changing facilities “remain safe,” while those against the bill described how SB 6 can make these environments less safe, particularly for TGD people or gender non-conforming cisgender individuals, as stated here: “As a woman, I class this bill as an example of violence against women, because the chief victims will be transsexual girls and women who will be the targets of brutal bullying, sexual violence, and possibly murder.”

There were a variety of arguments used within this theme, with claims about the “protection of children” presented frequently by those for and against the bill, particularly by those focusing their testimony on schools and school-aged children. One constituent testified to that effect here:

SB 6 is a compassionate, sensitive, and inclusive way to make sure every child, including survivors of sexual abuse, have their right to privacy protected in schools and public facilities. It is our job as lawmakers to protect all individuals, to assure them they are in a secure public school. Secure! This is sometimes the only place they don’t have to worry about suffering or feeling vulnerable.

Constituents opposing SB 6 and focusing their testimonies on school settings primarily discussed the ways in which bills like SB 6 make public schools less safe and accessible for TGD youth:

On the whole, our trans students do not feel safe at school. These fears have only intensified in the past few months as rhetoric surrounding HB 6 has contributed to a dramatic increase in bullying and harassment of trans youth. You’ve heard many times tonight that our kids are fasting, they’re getting UTI’s [Urinary Tract Infections] rather than enduring the humiliation and harassment that happens in the bathroom. Our transgender students wish simply to exist and learn unimpeded by discrimination, harassment, and fear.

Scare tactics

Those in support of SB 6 were likely to frame their testimony using scare tactics and strategies to evoke fear using rhetoric that described how restrooms operating on the basis of gender identity

create a danger of people they described as “men posing as transgender women” to commit crimes. “Bad actors” and “nefarious minds” are terms used in relation to this code by senators, such as here:

So my next question is how do we prevent bad actors from infringing upon the rights of those that do not identify as transgender people, under the pretext of saying that they internally, without any way shape of form to substantiate it by another person, they internally, at that moment, they identify as a gender other than their biological gender?

Violence and sexual assault were two frequently addressed themes by those both for and against SB 6. For those supporting the bill, a common argument was that SB 6 was necessary to protect women from increased violence in public restrooms and changing facilities, as in this constituent’s testimony:

And so I’m saying that I’m, that, um, if you’re placing women at risk for sexual assault, if you allow the men in the restrooms and the locker rooms, I’m hoping that—we’ve elected you, and I ask you to stand up for common sense, common decency, and public safety, it’s the right thing to do.

Those against SB 6 were more likely to describe how SB 6 could put women, particularly transgender women, at an increased risk of being victims of violence:

The ironic thing is that much of the rhetoric of this bill says that it is to protect women and children, it puts the most vulnerable women and children—which are those who are transgender—right in the crosshairs of violence.

Privacy and dignity

The privacy and dignity of individuals using public restrooms and changing facilities, referred to by the bill author as “most intimate settings,” is frequently addressed by constituents and senators alike. This code was most often applied to testimony by those in support of SB 6, as used here: “I stand personally for the rights of women and girls to privacy, that doesn’t mean I hate anybody or wish anybody harm.” Being the Texas Privacy Act, “Privacy and Dignity” is invoked often by the bill’s author, Senator Lois Kolkhorst. Those opposing SB 6 made

statements that forcing people into facilities that do not align with their gender identity denies them the right to basic dignity. Individuals against SB 6 also pointed out that SB 6 forcibly outs TGD individuals when forcing them into facilities of a gender they do not identify with, and that this is a violation of privacy. Arguments related to privacy and dignity were frequently presented in combination with those about safety and security, as well as about the “protection” of children.

Gender essentialism

Some individuals used bio-determinism and biological framing in arguments that equated sex assigned at birth and gender. As one constituent stated, “I don’t believe anybody can change their sex, um, biology isn’t bigotry. I’m against medical experimentation on children to make them to appear to be the opposite sex because of sexist stereotypes in this society.” Terms such as “biological male” or “biological female” to erase the experience of TGD individuals and reduce them to their sex assigned at birth fell within this theme as well. Gender essentialism was only used as an argument by those in support of SB 6.

TGD people forced into wrong bathroom

This code refers to the fact that SB 6 would require individuals to use facilities that correspond to an individual’s birth certificate, which many people are unable to update. For instance, one constituent stated: “Forcing a transgender person to use a bathroom that corresponds with their birth certificate allows an already singled out and bullied population to face further backlash.” This bill also neglects the fact that some states allow individuals to be designated as intersex on their birth certificates. As such, some individuals discussed how SB 6 would impact those whose non-Texan birth certificates list them as intersex, as SB 6 only recognizes male and female designations, such as the following testimony:

And as we’ve seen today, birth certificates are vital statistics, and there are states in the United States that issue intersex birth certificates. And what this bill claims is that these people are not able to use any multi-stall bathroom in the state of Texas.

Individuals also shared about the implications of SB 6 for the health and well-being for TGD people. For instance, some testimony focused on the fact that this bill would lead to compromised health for TGD people as a product of avoiding bathrooms:

Most transgender Texans, as you know, avoid using public restrooms because they are afraid of being confronted and harassed. Over a third of transgender Texans in the past year limited the amount they ate or drank to avoid using the restroom. This leads to increases in dehydration, kidney damage, and constipation.

Furthermore, this bill could also lead to TGD people having decreased access to healthcare services. The following testimony demonstrated how this could result from this bill:

And when you're telling somebody that they can't use the bathroom that they need to use, um, to go to the doctor, that's probably going to make them not want to go to the doctor. And particularly with the, the, um, transgender community, they're already at a disadvantage in, in healthcare, and I think this bill just, uh, kinda goes to, uh, increase those disadvantages.

Arguments about TGD people being forced into the wrong restroom were only presented by individuals opposed to SB 6 and were frequently presented in combination with statements about safety and security.

Discrimination

Statements about discrimination were frequently made by those opposing SB 6. Many constituents remarked that this bill is inherently discriminatory, or that it legislates discrimination. One constituent remarked that "SB 6 would legalize, even encourage, discrimination against transgender people, in a sense giving permission to those who would attack, both verbally and physically, this already vulnerable population." In a smaller number of these cases, the discriminatory nature of this law and its intentions were likened to segregation, with the invocation of phrases such as "bathrooms are the new water fountains," and "this is not about bathrooms, just as it was never about water fountains."

Refuting discrimination

Some individuals in favor of SB 6 tried to refute claims that SB 6 was discriminatory. One Senator stated that "I know what it is to be discriminated against, and I wouldn't want anyone to go through that. This is nowhere close to that." This testimony occurred much less often than that describing the bill as a form of discrimination and was always used by those in favor of SB 6. The phrase "differentiation is not discrimination" was used multiple times by those in support of SB 6.

Intersection of minority identities

Amongst TGD populations, TGD women and TGD individuals in racial or ethnic minority groups face compounded discrimination and rates of violence against these individuals are even higher than for TGD people overall. Constituents opposing this bill brought up the murder rate of transgender women of color, as was noted here: "Every November we have a Transgender Day of Remembrance, and we read hundreds of names. Many of them are Black trans women and Black trans men. This is a criminalization of blackness as well." The intersections of different minority identities can make TGD individuals with multiple minority identities particularly vulnerable and impact their safety in public restrooms and changing rooms as well as in other facets of daily life.

Mental health

This code was applied almost exclusively to testimony of those opposing SB 6. Such testimony primarily referred to the negative impacts that passing a bill such as SB 6 would have on the mental health of TGD people. One mental health professional stated that "Psychologically, this bill is the definition of non-affirming. It communicates to transgender people that they do not belong. These are the two largest predictors of suicide, and quite literally this bill is killing my patients." Many constituents pointed out references to statistics, including that 40% of transgender individuals may attempt suicide during their lifetime, but that this number goes down dramatically when individuals are accepted and affirmed.

Testimony also focused on individual stories concerning suicide, as well as testimony about how legislation like SB 6 affects rates of suicide. The following exemplifies this type of testimony:

Because of laws that—because of laws like SB 6 that restrict when, where, and how we can live our lives, 50% of trans people suffer from depression, and 44% attempt suicide, a number that was mentioned earlier as well. And I know that because I was one of them. If I was not able to sit before you today as a transgender man, as a man, I would have killed myself.

Local ordinances

A number of cities and schools across Texas had local ordinances in place before the proposition of SB 6 that dictated rules related to public restroom use. One of the most frequently cited of these ordinances was Houston's Equal Rights Ordinance (HERO). HERO allowed individuals to use public facilities on the basis of gender identity and expression as opposed to their sex assigned at birth. One senator described it here: "Well I'm not an expert on it, but, but, the city, the city passed an ordinance that caused public outcry that basically stated that there was no identification for restrooms by gender." HERO and similar ordinances were discussed during the hearing of SB 6 as examples of policies that could be put in place if state-level legislation was not passed. Those opposing SB 6 used HERO to show that allowing individuals to use facilities that align with their gender identity and expression does not result in a rise in criminal offenses in these facilities whereas those in support of SB 6 used this ordinance to argue the need for state level legislation to counter such ordinances.

Texas pride

Some individuals made a point of asserting their pride in Texas or their identity as a Texan. One constituent opened their testimony with the following sentiment: "I am a proud Texan. I wasn't born here. I got here as fast as I could, right, I have been training to say that. And this is not the Texas that I want to be proud of." Though this sort of testimony did not appear with high frequency, it seemed to be used as a strategy to connect with senators and to express a sense of

belongingness to Texas that would provide the speaker with greater clout. Assertions of Texas pride were made by both those testifying against and supporting the bill.

Women's rights

SB 6 was sometimes framed in terms of women's rights, usually with the idea that such legislation protects women's right to privacy and safety, such as one constituent noted here: "The legislation offers nondiscriminatory guidance to public buildings and schools by protecting all human rights, including women's rights and parental rights, and by allowing for personal accommodations for special circumstances." Other individuals argued that SB 6 pretends to protect women but places the most vulnerable women in further danger, with one constituent stating that "The irony has not escaped me that as a state that notoriously and often takes stances opposite of women's rights and body autonomy, you would try to pass this bill off as a women's rights issue." Some individuals also connected their arguments to Title IX, such as the following: "transgender— discrimination is sex discrimination under our federal civil rights laws. Transgender discrimination violates Title IX. SB 6 therefore violates Title IX." Arguments about women's rights were used evenly by those in support of and those opposing SB 6.

Religion

A number of faith leaders provided testimony for and against SB 6, but many additional individuals made faith-based arguments in support of and in opposition to the bill. One constituent used the following verse in their testimony: "And when asked about the greatest laws of God, Jesus said, 'you shall love the Lord God with all your heart, and with all your soul and with all your mind, and you shall love your neighbor as yourself.'" This verse was used to argue against SB 6 by making the case that "no neighbor [is] closer to us than the one in the next bathroom stall." One senator repeatedly questioned constituents on their faith if they made such comments, questioning one man, "I take it you believe in God?" Two individuals pointed out that such arguments

were inconsistent with a separation of church and state. A common argument in support of SB 6 was that God does not make mistakes, as testified by one pastor here:

You see, uh, as a pastor, if you ask me it's very simple. It would not be so complicated to understand, that, in the beginning, God created. And God made a difference between, uh, male and female. And God made no mistakes in creation.

"Already Laws on the Books"

This code was applied to testimony focusing on the existence of legislation that already deals with the crimes cited as reasons for the passing of SB 6. Constituents against SB 6 described the bill as a "solution in search of a problem." One constituent stated that SB 6 "...addresses a non-problem, to me. There are no reports of a transgender person assaulting anyone in school bathrooms. There are already laws on the books to stop and punish assault no matter where it occurs." Such testimony focused on existing laws that make voyeurism, lewdness, assault, and other forms of violence illegal in restrooms or otherwise and point to this as a reason why SB 6 is unnecessary.

Common sense

Some individuals framed their view on SB 6 as simply being the "common sense" view. Those in support of SB 6 argued that it was common sense legislation and that they were testifying in defense of the "status quo," as stated here: "I'm glad to say that I've heard in the two days that I've been up here, legislators like yourselves who are willing to establish again a, a set of parameters that align with common sense." Constituents testifying against SB 6 argued that it is common sense to listen to TGD individuals and mental health experts when it comes to how discrimination affects this community. Common sense dictates that transgender men are men and should use men's facilities, and transgender women are women and should use women's facilities, according to one constituent opposing SB 6:

I'm not finding the public safety issue that's being alluded to when it comes to the transgender community. It feels like discrimination to me. And, you

know, I've kinda been taught—I'm a multi-generational Texan—I've been taught if it looks like a duck, and swims like a duck, and quacks like a duck, it's probably a duck. We have a lot of, uh, information here on women's rights, and I'm completely on board with women's rights and safety in intimate spaces, but I don't understand why the transgender identity is being connected to that. And that's problematic.

Code occurrence

The large majority of those who came to testify on SB 6 were against the legislation, and codes associated with opposition to SB 6 are thus much more represented in the transcript. The most commonly applied codes overall were "Safety and Security," "Discrimination," "Economic Impact," "Privacy and Dignity," and "TGD People Forced into the Wrong Bathroom." Certain codes, such as "TGD People Forced into the Wrong Bathroom," are notable in that they are used almost exclusively by those against SB 6. "Mental Health" is largely present in testimony of those against SB 6, and the subcategory of "Suicide" is used exclusively by those testifying against SB 6. The same is true for "Intersection of Minority Identities" being used almost exclusively by those against SB 6, and "Gender Essentialism" being used almost exclusively by those in favor of SB 6. Codes such as "Women's Rights" and "Religion" are, by contrast, used much more uniformly by those both for and against SB 6.

Discussion

Consistent with previous research, Senate support for this bill was extremely partisan, with one Democrat voting in support of the bill and no Republicans voting against it (Cox & Jones, 2011). With such a stark division, the party that makes up the Senate majority is, at least in this case, a powerful indicator of a bill's potential success. The Texas Senate voted to pass SB 6 after listening to 86.51% of the testimony being against the bill. While 65% of the invited testimony was in support of SB 6, most of the overall testimony opposed the bill and it was supported by senators despite this (although the law was not implemented). The question then becomes, what would it have taken for this bill to fail in the hearing?

As SB 6 was compared frequently to North Carolina's HB 2, it is important to note that the North Carolina Senate also has a strong Republican majority. With the majority of similar legislation being proposed in largely Republican states, it is important to better understand the intense political polarization of issues that impact TGD people and the role this plays in proposed legislation that negatively affects TGD individuals.

The role of framing

Beyond partisan divides, previous studies of news coverage related to the lives of TGD people suggests that arguments concerning these topics often align with either “equality” framing or “safety and security” framing (Tadlock, 2014). “Safety and Security” and “Discrimination” were indeed the two most frequently applied codes in this study. Although “Discrimination” was applied almost exclusively to testimony of those against SB 6, “Safety and Security” was used frequently by those both for and against the bill. Those in favor of SB 6 were more likely to refer to scare tactics like predatory behaviors and sexual assault—particularly in terms of women and children—while those against the bill were more likely to describe how legislation such as SB 6 exacerbates documented violence against TGD youth and adults. Though all such testimony falls broadly under the umbrella of “Safety and Security,” this example illustrates how the same frame can be used differently on one issue.

The testimony for some groups was more homogenous than others. There were no examples of mental health professionals or medical doctors testifying in support of SB 6. Student support of SB 6 varied largely depending on whether or not they were university-level students or elementary/high school level students, with university students being more likely to oppose SB 6 than K-12 children, particularly in the case of cisgender constituents. The testimony of faith leaders and educators was more divided.

The role of children

Throughout the hearing for SB 6 children's safety was a frequent topic of conversation. Regarding

the testimony of students, there was a noticeable split in the testimony of K-12 students and university students, with young children and adolescents being more likely to support SB 6 (excluding TGD children) and university students being more likely to oppose SB 6. Parental figures who accompanied their younger children to the stand would generally testify first, and the child's testimony followed the same format of the parent's. In cases of testimony for and against SB 6, there were cases of parents asking leading questions to their children, such as “How did you feel, when you found out that a boy could share the same bathroom with you?”, or “How would you feel if you had to go into a male bathroom?” Children are frequently used as pawns in conversations about legislation targeting the rights of TGD people, positioned as a vulnerable group who must be protected with or against legislation.

The cost of human rights

Two of the most frequent topics in the discussion of SB 6 were those of economic impact and discrimination. Those opposing SB 6 with arguments about economic impact were generally business owners or business representatives concerned that the passing of SB 6 would result in a loss of business to Texas. Use of this sort of frame seldom overlapped with concerns about discrimination, except for those arguing that Texas being perceived as a discriminatory state could negatively affect tourism. Supporters of SB 6 argued that potential negative economic impact resulting from SB 6 would not be “significant” enough to justify opposing the bill. What is particularly interesting is how infrequently these two codes co-occur, despite them being two of the most frequently applied codes. The arguments also diametrically oppose the issue of human rights with consumerism, with proponents of the bill using HB 2 in North Carolina as an example of the cost of discrimination not being significant enough to prohibit the passage of such bills. Even so, it is clear these laws do have a financial impact (Domonoske, 2017) and that legislators may choose strategies of framing such costs as a tactic to minimize these.

Implications for TGD individuals

In a 2016 survey of the TGD community, 59% of respondents reported avoiding public bathrooms within the past year and 32% reported limiting the amount they ate or drank to avoid using public restrooms (James et al., 2016). Many TGD individuals testifying in opposition to SB 6 reported this behavior and medical doctors testified as to the effects such legislation can have on the body, including urinary tract infections and kidney damage. Critically, no medical doctors or mental health providers expressed support for SB 6. This group of constituents emphasized that the stigma and discrimination perpetuated by SB 6 served to exacerbate mental health issues in a community that already has an alarmingly high rate of suicide attempts. Legislation that restricts access to public restrooms and other sex-segregated facilities also limits individuals who are socially transitioning, and generally serves to make TGD individuals less safe. Previous research has shown that stigma has negative effects on the physical and mental health of TGD people and is related to increased use of alcohol and tobacco (Hughto et al., 2015). Legislation such as SB 6 further ingrains stigma toward TGD people into U.S. society and heightens such negative outcomes for this marginalized community.

The problem of birth certificates

The Texas Privacy Act is enforced by means of the sex stated on an individual's birth certificate, and the fact that this can be updated in the state of Texas is taken by some as an example of why SB 6 is not discriminatory. A number of constituents testified as to the difficulty of updating one's birth certificate in Texas, detailing the process of interacting with therapists, medical doctors, and a judge who can refuse to give the order of a gender marker update, even if all requirements are met. Between medical costs, court fees, and potentially the costs of hiring a lawyer, this process can be extraordinarily expensive, and is thus not available to a large portion of TGD individuals, especially considering that many TGD people are living in poverty and may experience challenges in employment (James et al., 2016). Additionally, some states have identification

options for birth certificates and drivers' licenses that are not limited to male and female, and these individuals face further complications when it comes to using facilities in states where use of these facilities is designated by binary sex assignment at birth. Individuals with intersex designations on their birth certificates, for example, would not be able to use any sex-segregated facility in the state of Texas under the enforcement of SB 6. Constituents expressed concern about the enforceability of this bill and whether or not Texas would become a "show me your papers" state, with individuals being required to carry around copies of their birth certificate to somehow demonstrate officially their legal right to use a restroom or changing facility.

Fearmongering tactics

Individuals in support of SB 6 expressed concern that, without a bill such as SB 6 in place, "bad actors" would take advantage of the lack of legislation and enter women's restrooms and changing facilities with malicious intent. Many favoring this rhetoric often made clear that their concern was not about TGD individuals committing crimes in these facilities, but rather about cisgender individuals posing as TGD people to enter facilities and cause harm. Others supporting SB 6 used bio-deterministic frames and arguments rooted in gender essentialism and conflated sex assigned at birth with gender in order to use scare tactics and inaccurately portray transgender women especially (Schilt & Westbrook, 2015).

Those opposing SB 6 pointed out that transgender women, particularly transgender women of color, are at an extremely elevated risk for harassment or assault and forcing these women into men's facilities if their birth certificates do not align with their identity opens them up to more potential harm. Others noted that such legislation does not prevent actual perpetrators from entering facilities to cause harm. The disconnect between the proposed purpose of this legislation and the functional effects of it is a frequent discussion point, and it illustrates the discordance in the way that those for and against SB 6 think and talk about sex assigned at birth and gender.

“Texas pride” and bridging the gap

Despite the relatively low frequency with which they appeared, statements about pride in either Texas or Texan identity were consistent across groups of constituents. Taking the time to note Texan pride when constituent testimony had a time limit of just 2 minutes necessitates the question of why individuals were spending their time discussing a subject apparently unrelated to SB 6. Through the process of coding this hearing, it became clear that, though a deep partisan divide was present and greatly influenced the votes for SB 6, senators in support of SB 6 were more likely to engage with constituents in a meaningful way if there was something in the constituent’s testimony that allowed them to bridge the gap and become relatable to the senators. Constituents who, in addition to opposing SB 6, were also vocal about being conservative, Republican, deeply religious, or proud Texans seemed more likely to connect with senators who supported SB 6. In this way, Texas pride was in some cases a way to establish rapport with senators and, for TGD constituents, a way to situate themselves as less of an “other.” Though the partisan divide of the senate was ultimately almost completely split in the vote on SB 6, the most influential testimony in terms of engaging with the senators in a meaningful way seemed to be finding a source of commonality to bridge the gap between those in support of SB 6 and those against it. Finding ways to build such a personal connection is something that individuals challenging legislation that harms TGD communities may benefit from incorporating into their testimonies.

The role of education

Those testifying in support of SB 6 demonstrated a notable lack of knowledge of what it means to be TGD, as demonstrated in their use of bio-deterministic language, consistent reference to “biological sex,” and use of words and phrases that were pejorative or microaggressive to refer to TGD people. Previous studies have demonstrated that increased familiarity with TGD individuals is associated with improved opinions of TGD populations (Broockman & Kala, 2016; Flores et al., 2018a), and even seeing the faces

of TGD individuals is associated with a more positive opinion of TGD people (Flores et al., 2018). Combatting negative stereotyping of and misinformation surrounding TGD populations requires a willingness to listen to and understand the experiences of TGD people instead of regarding them as an “other.” The lack of familiarity with a group that is so directly affected by the proposed legislation is particularly striking in the case of SB 6. Education about TGD populations is absolutely critical in cases such as this where the passing of a bill has the power to so deeply impact TGD individuals. Such educational initiatives could center on differences between sex assigned at birth and gender, intersex experiences and biological variation, and empirical evidence of the effects of such legislation on the health and wellbeing of TGD people.

Status of this legislation

SB 6 was passed by the Texas senate in 2017 (Texas Legislature Online) but did not get implemented ultimately even after Governor Greg Abbott called a special session in which the bill was to be reviewed. Given that the law was not implemented, we cannot be certain what the outcome of this specific piece of legislation would have been from a health and economic standpoint. Even so, other research has shown that having the rights of marginalized groups – specifically gay, lesbian, and bisexual individuals – up for vote can have a negative impact on mental health (Rostosky et al., 2010; Rostosky et al., 2009) and this is likely for TGD individuals as well. Although we are not aware of research specifically evaluating this particular case, it is possible that these effects would also be seen in relation to this legislation. Other research has shown, for example, that living in a state that has employment protections and hate crimes legislation that is inclusive of TGD individuals is associated with a decreased odds of mood disorders and self-directed violence for transgender individuals (Blosnich et al., 2016). It is likely that legislation like this that restricts the rights of TGD individuals would have a detrimental impact on mental and physical health.

Limitations and directions for future research

Despite the many hours of testimony informing this analysis, the data only represents the opinions of individuals from one state at a particular moment in time. In order to understand arguments for and against this type of legislation more broadly, a similar analysis must be conducted on public testimony from legislation in other states. Many bills like SB 6 were proposed in 2017 and following years, though a large number never made it to the hearing stage. An analysis of those that did would allow for an understanding of the generalizability of the trends discussed here and the potential influences of geography. Furthermore, given this was a public hearing, we did not have more information than what speakers provided at the hearing in terms of their viewpoints, reasoning behind such views, and other data that may help to contextualize their statements. As such, future research may benefit from more in-depth interviews with constituents about their perspectives on this type of legislation.

Conclusion

Due to the number of bills proposed during and since 2017 that impact TGD individuals' access to public restrooms, locker rooms, and changing facilities on the basis of sex assigned at birth, such analyses are pivotal in informing what causes such legislation to pass or fail. The hearing for SB 6 involved a senate majority that supported SB 6 and an overwhelming majority of public testimony opposing the bill. Through analyzing the statements of both the senators and constituents, notable themes emerged in the ways that those for and against the bill framed their arguments. Those supporting SB 6 were more likely to discuss the bill in terms of safety and security, economic effect, and privacy and dignity whereas those opposing SB 6 focused on themes of discrimination, safety and security, and TGD people being forced into facilities that do not align with their gender identity. Further understanding these frames and their use in public hearings may help shed light on how biases and beliefs shape political outcomes and how views of gender minorities are influenced by sociopolitical contexts.

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References

- Blosnich, J. R., Marsiglio, M. C., Gao, S., Gordon, A. J., Shipherd, J. C., Kauth, M., Brown, G. R., & Fine, M. J. (2016). Mental health of transgender veterans in US states with and without discrimination and hate crime legal protection. *American Journal of Public Health*, 106(3), 534–540. <https://doi.org/10.2105/AJPH.2015.302981>
- Bradford, J., Reisner, S. L., Honnold, J. A., & Xavier, J. (2013). Experiences of transgender-related discrimination and implications for health: Results from the Virginia Transgender Health Initiative Study. *American Journal of Public Health*, 103(10), 1820–1829. <https://doi.org/10.2105/AJPH.2012.300796>
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101. <https://doi.org/10.1191/1478088706qp063oa>
- Broockman, D., & Kalla, J. (2016). Durably reducing transphobia: A field experiment on door-to-door canvassing. *Science (New York, N.Y.)*, 352(6282), 220–224. <https://doi.org/10.1126/science.aad9713>
- Castle, J. (2019). New fronts in the culture wars? Religion, partisanship, and polarization on religious liberty and transgender rights in the United States. *American Politics Research*, 47(3), 650–679. <https://doi.org/10.1177/1532673X18818169>
- Colvin, R. (2008). Innovations in non-discrimination laws: Exploratory research on transgender-inclusive cities. *Journal of Public Management & Social Policy*, 14(1), 19–34.
- Cox, D. & Jones, R. P. (2011). Most Americans favor rights and legal protections for transgender people. *Public Religion Research Institute*. Retrieved from <https://www.prri.org/research/american-attitudes-towards-transgender-people/>
- Domonoske, C. (2017). AP calculates North Carolina's 'bathroom bill' will cost more than \$3.7 billion. *National Public Radio*. <https://www.npr.org/sections/thetwo-way/2017/03/27/521676772/ap-calculates-north-carolina-s-bathroom-bill-will-cost-more-than-3-7-billion>
- Flores, A. R., Haider-Markel, D. P., Lewis, D. C., Miller, P. R., Tadlock, B. L., & Taylor, J. K. (2018). Transgender

- prejudice reduction and opinions on transgender rights: Results from a mediation analysis on experimental data. *Research & Politics*, 5(1), 205316801876494. <https://doi.org/10.1177/2053168018764945>
- Haider-Markel, D., Taylor, J., Flores, A., Lewis, D., Miller, P., & Tadlock, B. (2019). Morality politics and new research on transgender politics and public policy. *The Forum*, 17(1), 159–181. <https://doi.org/10.1515/for-2019-0004>
- Hatzenbuehler, M. L., McLaughlin, K. A., Keyes, K. M., & Hasin, D. S. (2010). The impact of institutional discrimination on psychiatric disorders in lesbian, gay, and bisexual populations: A prospective study. *American Journal of Public Health*, 100(3), 452–259. <https://doi.org/10.2105/AJPH.2009.168815>
- Herman, J. L. (2013). Gendered restrooms and minority stress: The public regulation of gender and its impact on transgender people's lives. *Journal of Public Management & Social Policy*, 19(1), 65–80.
- House Bill 2/SL 2016-3. (n.d.). *North Carolina General Assembly*. <https://www.ncleg.gov/BillLookup/2015E2/h2>
- Hughto, J. M. W., Reisner, S. L., & Pachankis, J. E. (2015). Transgender stigma and health: A critical review of stigma determinants, mechanisms, and interventions. *Social Science & Medicine* (1982), 147, 222–231. <https://doi.org/10.1016/j.socscimed.2015.11.010>
- James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. National Center for Transgender Equality.
- Kralik, J. (2019). "Bathroom bill" legislative tracking. *National Conference of State Legislatures*. <https://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx>
- Lindaman, K., & Haider-Markel, D. P. (2002). Issue evolution, political parties, and the culture wars. *Political Research Quarterly*, 55(1), 91–110. <https://doi.org/10.1177/106591290205500104>
- Miller, R. (2017). *AMA takes several actions supporting transgender patients*. American Medical Association. <https://www.ama-assn.org/delivering-care/population-care/ama-takes-several-actions-supporting-transgender-patients>
- Norton, A. T., & Herek, G. M. (2013). Heterosexuals' attitudes toward transgender people: Findings from a national probability sample of U.S. adults. *Sex Roles*, 68(11–12), 738–753. <https://doi.org/10.1007/s11199-011-0110-6>
- Platt, L. F., & Milam, S. R. B. (2018). Public discomfort with gender appearance-inconsistent bathroom use: The oppressive bind of bathroom laws for transgender individuals. *Gender Issues*, 35(3), 181–201. <https://doi.org/10.1007/s12147-017-9197-6>
- Rostosky, S. S., Riggle, E. D. B., Horne, S. G., Denton, F. N., & Huellemeyer, J. D. (2010). Lesbian, gay, and bisexual individuals' psychological reactions to amendments denying access to civil marriage. *The American Journal of Orthopsychiatry*, 80(3), 302–310. <https://doi.org/10.1111/j.1939-0025.2010.01033.x>
- Rostosky, S. S., Riggle, E. D. B., Horne, S. G., & Miller, A. D. (2009). Marriage amendments and psychological distress in lesbian, gay, and bisexual (LGB) adults. *Journal of Counseling Psychology*, 56(1), 56–66. <https://doi.org/10.1037/a0013609>
- SB 6. (n.d.). *Texas Legislature Online*. <https://capitol.texas.gov/billlookup/History.aspx?LegSess=85R&Bill=SB6>
- Schilt, K., & Westbrook, L. (2015). Bathroom battlegrounds and penis panics. *Contexts*, 14(3), 26–31. <https://doi.org/10.1177/1536504215596943>
- Schmidt, D. A. (2013). Bathroom bias: Making the case for trans rights under disability law. *Mich. J. Gender & L*, 20, 155.
- Senate Committee on State Affairs (Part I). (n.d.). *The Texas senate: Streaming video player*. https://tlcsenate.granicus.com/MediaPlayer.php?view_id=42&clip_id=11799
- Senate Committee on State Affairs (Part II). (n.d.). *The Texas senate: Streaming video player*. https://tlcsenate.granicus.com/MediaPlayer.php?view_id=42&clip_id=11811
- Sinnard, M. T., Raines, C. R., & Budge, S. L. (2016). The association between geographic location and anxiety and depression in transgender individuals: An exploratory study of an online sample. *Transgender Health*, 1(1), 181–188. <https://doi.org/10.1089/trgh.2016.0020>
- Tadlock, B. L. (2014). Issue framing and transgender politics: An examination of interest group websites and media coverage. In J. K. Taylor & D. P. Haider-Markel (Eds.), *Transgender rights and politics: Groups, issue framing, and policy adoption* (pp. 25–48). University of Michigan Press.
- Taylor, J. K., Haider-Markel, D. P., & Rogers, B. (2019). Toward a new measure of state-level LGBT interest group strength. *State Politics & Policy Quarterly*, 19(3), 334–350.
- Williams, M. L. (2016). "I don't belong in here!" A social media analysis of digital protest, transgender rights, and international restroom legislation. In K. Langmia & T. C. M. Tyree (Eds.), *Social media: Culture and identity* (pp. 27–48). Lexington Books.
- Wuest, J. (2019). The scientific gaze in American transgender politics: Contesting the meanings of sex, gender, and gender identity in the bathroom rights cases. *Politics & Gender*, 15(2), 336–360. <https://doi.org/10.1017/S1743923X18000338>